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ANTI-ATROCITY ALIEN DEPORTATION ACT OF 2001

APRIL 25, 2002.—Ordered to be printed

Mr. LEAHY, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany S. 864]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to which was referred the bill (S. 864) to amend the Immigration and Nationality Act to provide that aliens who commit acts of torture, extrajudicial killings, or other specified atrocities abroad are inadmissible and removable and to establish within the Criminal Division of the Department of Justice an Office of Special Investigations having responsibilities under the Act with respect to all alien participants in war crimes, genocide, and the commission of acts of torture and extrajudicial killings abroad, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

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I. PURPOSE AND NEED FOR S. 864

The Anti-Atrocity Alien Deportation Act, S. 864, is intended to close loopholes in U.S. immigration laws that have allowed aliens, who have committed serious forms of human rights abuse abroad, to enter and remain in the country. A report issued on April 10,

2002, by Amnesty International asserts that nearly 150 alleged human rights abusers have been identified living in the U.S., but warned that the actual number may be as high as 1,000. The problem of human rights abusers seeking and obtaining refuge in this country requires an effective response with the legal and enforcement changes proposed in this legislation.

The bill, as amended and reported by the Senate Committee on the Judiciary, would make the following significant changes in current law:

First, the bill would amend the Immigration and Nationality Act (INA) to expand the grounds for inadmissibility and deportability to cover aliens who have engaged abroad in acts of torture, as defined in 18 U.S.C. § 2340, and extrajudicial killing, as defined in the Torture Victim Protection Act, as well as expand the scope of the current prohibitions on aliens who have engaged in genocide and particularly severe violations of religious freedom, while removing the current bar to admission for the spouses or children of foreign government officials who were involved in particularly severe violations of religious freedom.

Second, the bill would amend the INA to clarify that aliens who have committed torture, extrajudicial killing or particularly severe violations of religious freedom abroad do not have "good moral character" and cannot qualify to become U.S. citizens or for other immigration benefits.

Third, the bill would provide statutory authorization for the Office of Special Investigations (OSI) within the Criminal Division; expand the OSI's authority to denaturalize any alien who participated in torture, genocide and extrajudicial killing abroad—not just Nazi war criminals; authorize the Attorney General to delegate other responsibilities to determine inadmissibility, deportability, removal, prosecution or extradition of such aliens to appropriate components of the Department of Justice; and direct that consideration be given to prosecution, either in the United States or to another country, for conduct that may form the basis for removal and denaturalization.

Finally, the bill would direct the Attorney General, in consultation with the INS commissioner, to report to the Judiciary Committees of the Senate and House of Representatives on implementation of procedures to refer matters to OSI, revise INS forms, and procedures, with adequate due process protection, to obtain sufficient evidence to develop "watch lists" of aliens deemed inadmissible under the bill.

II. LEGISLATIVE HISTORY

In the 106th Congress, legislation similar to S. 864 was originally introduced by Senators Leahy, Lieberman and Levin as S. 1375. The legislation passed the Senate on November 5, 1999, as title III of S. 1754, "Denying Safe Havens to International and War Criminals Act," sponsored by Senators Hatch and Leahy. Representatives Foley and Ackerman introduced the measure in the House of Representatives in the 106th Congress as H.R. 2642 and H.R. 3058. Unfortunately, no action was taken by the House in that Congress.

In the 107th Congress, S. 864 was introduced on May 10, 2001, by Senators Leahy, Lieberman and Levin. A version of this bill was

introduced in the House on April 4, 2001, as H.R. 1449, by Representatives Foley and Ackerman.

III. VOTE OF THE COMMITTEE

The Senate Committee on the Judiciary, with a quorum present, met on Thursday, April 18, 2002, to consider the "Anti-Atrocity Alien Deportation Act." The Committee considered a substitute amendment offered by Chairman Leahy and Ranking Republican Hatch to S. 864 and approved the bill, so amended, by voice vote, with no objection noted, and ordered the bill to be reported favorably to the Senate, with a recommendation that the bill do pass. Senator Feingold co-sponsored the substitute amendment.

IV. DISCUSSION

U.S. immigration laws currently have the unintended effect of allowing war criminals and human rights abusers to enter and remain in the country. Through these legal loopholes, the United States has become a safe haven for those who exercised power in foreign countries to terrorize, rape, murder and torture innocent civilians. The problem is more than a set of isolated incidents. According to Amnesty International, nearly 150 alleged human rights abusers have been identified living in the U.S., but the group warns that this number may be as high as 1,000.

Observers have noted the irony that in the wake of the September 11, 2001 attacks, hundreds of foreigners have been rounded up though not charged with any terrorism-related crime. Yet, at the same time, "hundreds, if not thousands, of foreign nationals who have been plausibly accused of the most heinous human rights crimes, including torture and assassination, either have lived or still live freely in the U.S." William Schulz, "The Torturers Among Us," New York Review, p. 22, April 25, 2002.

The problem of human rights abusers seeking and obtaining refuge in the United States is exemplified by the following case: Three Ethiopian refugees proved in an American court that Kelbessa Negewo, a former senior government official in the military dictatorship that ruled Ethiopia in the 1970s, engaged in numerous acts of torture and human rights abuses against them when they lived in that country. Negewo then moved to the United States only to work at the same Atlanta hotel as one of the very victims whom he had tortured. The court's descriptions of the abuse are chilling, and included whipping a naked woman with a wire for hours and threatening her with death in the presence of several men. The court's award of compensatory and punitive damages in the amount of $1,500,000 to the plaintiffs was subsequently affirmed by an appellate court. See *Abebe-Jira* v. *Negewo,* 72 F.3d 844 (11th Cir. 1996). Yet, while Negewo's case was on appeal, the Immigration and Naturalization Service granted him citizenship.

This situation is an affront to the foreign victims of torture who have come to this country to flee such persecution, and to the American victims of such torture and their families. As Professor William Aceves of California Western School of Law has noted, this case reveals "a glaring and troubling limitation in current immigration law and practice. This case is not unique. Other aliens who have committed gross human rights violations have also gained entry into the United States and been granted immigration relief."

William J. Aceves, "Using Immigration Law to Protect Human Rights: A Legislative Proposal," 20 Mich. J. Int'l. L. 657 (Summer, 1999).

An April 2002 report by Amnesty International describes the case of Yusuf Abdi Ali. See United States of America: A Safe Haven for Torturers, Amnesty International USA, April 2002, at 42–43. Ali served under the Somali warlord, Mohammed Siad Barre. The Barre regime was accused of egregious abuses, "including the routine torture of political prisoners, thousands of detentions without charge or trial, grossly unfair political trials, many of which resulted in executions, and extrajudical executions of thousands of civilians." Id. Ali sought refugee status in Canada after the Barre regime fell in 1991. When allegations surfaced that he had ordered the execution of over 100 Somalis, Ali was deported to the United States, through which he had passed in 1990 on a diplomatic visa. In 1998, Ali was arrested by the INS for fraud, based on charges that he denied participation in genocidal acts in his application for permanent residency. "The case was dismissed, reportedly because Ali had already withdrawn his application for residency status." Id.

The fact that victims must encounter their foreign torturers in neighborhoods in the U.S. is a situation that should not have to be endured. Emmanuel "Toto" Constant led the Haitian death squad, the Revolutionary Front for the Progress of Haiti. The group, known as FRAPH, is "a legendary outfit of armed civilians who, together with the Haitian military, allegedly tortured, raped, and murdered thousands of people." David Grann, "Giving the Devil his Due," Atlantic Monthly, June 2001, at 55. Constant currently lives with his aunt in a two-story home in Queens, NYC. A Queens resident of Haitian descent, Emile Maceus, was shocked to find Constant—the man who had terrorized the Haitian population—at his door responding to a "for sale" sign in the yard. Id. Ray Laforest, another Queens resident forced to face his former tormentor, told the Atlantic Monthly that "Constant's men and other paramilitaries had dragged one of his friends from a church [in Haiti] and shot him in broad daylight." Id., at 58. Constant was arrested by the INS in 1995 and found deportable, but was released a year later. Id., at 68. In November of 2000, a Haitian court sentenced Constant to life in prison with hard labor for his role in a 1994 massacre. United States of America: A Safe Haven for Torturers, supra, at 34–35. Constant, however, still resides comfortably in Queens.

Indeed, another case actually involves American victims. In 1980, four American churchwomen were raped and murdered by the Salvadoran National Guard. Two former officials in the government of El Salvador allegedly covered up the murders. According to the United Nation's Truth Commission in El Salvador, one of the officials "concealed the fact that the murders had been carried out pursuant to superior orders," and the other "made no serious effort to investigate those responsible for the murders." Id., at 48. Both of these Salvadoran former officials currently reside in Florida.

The Clinton Administration recognized the deficiencies in our laws. One Clinton Administration witness testified in February, 2000:

> The Department of Justice supports efforts to enhance our ability to remove individuals who have committed acts

> of torture abroad. The department also recognizes, however, that our current immigration laws do not provide strong enough bars for human rights abusers. * * * Right now, only three types of human rights abuse could prevent someone from entering or remaining in the United States. The types of prohibited conduct include: (1) genocide; (2) particularly severe violations of religious freedom; and (3) Nazi persecutions. Even these types of conduct are narrowly defined.—Hearing on H.R. 3058, "Anti-Atrocity Alien Deportation Act," before the Subcomm. on Immigration and Claims of the House Comm. On the Judiciary, 106th Cong., 2d Sess., Feb. 17, 2000 (Statement of James E. Costello, Associate Deputy Attorney General).

The Anti-Atrocity Alien Deportation Act would provide a stronger bar to keep human rights abusers out of the U.S. The INA currently provides that (i) participants in Nazi persecutions during the time period from March 23, 1933 to May 8, 1945, (ii) aliens who engaged in genocide, and (iii) aliens who committed particularly severe violations of religious freedom, are inadmissible to the United States and deportable. See 8 U.S.C. § 1182(a)(2)(G) and (3)(E) and § 1227(a)(4)(D). The bill would expand the grounds for inadmissibility and deportation to (1) add new bars for aliens who have engaged in acts, outside the United States, of "torture" and "extrajudicial killing" and (2) remove limitations on the current bases for "genocide" and "particularly severe violations of religious freedom."

The definitions for the new bases of "torture" and "extrajudicial killing" are derived from the Torture Victim Protection Act, which implemented the United Nations' "Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment." These definitions are therefore already sanctioned by the Congress. The bill incorporates the definition of "torture" codified in the federal criminal code, 18 U.S.C. § 2340, which prohibits:

> an act committed by a person acting under the color of low specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control.—18 U.S.C. § 2340(1).

The federal criminal code further defines "severe mental pain or sufferings" to mean:

> prolonged mental harm caused by or resulting from (A) the intentional infliction or threatened infliction of severe physical pain or suffering; (B) the administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality; and (C) the threat of imminent death; or (D) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality.—18 U.S.C. § 2340(2).

The Torture Victim Protection Act also included a definition for "extrajudicial killing." Specifically, this law establishes civil liabil-

ity for wrongful death against any person "who, under actual or apparent authority, or color of law, of any foreign nation * * * subjects an individual to extrajudicial killing," which is defined to mean "a deliberated killing not authorized by a previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples. Such term, however, does not include any such killing that, under international law, is lawfully carried out under the authority of a foreign nation."

The bill would not only add the new grounds for inadmissibility and deportation, it would expand two of the current grounds. First, the current bar to aliens who have "engaged in genocide" defines that term by reference to the "genocide" definition in the Convention on the Prevention and Punishment of the Crime of Genocide. 8 U.S.C. 1182(a)(30(E)(ii). For clarity and consistency, the bill would substitute instead the definition in the federal criminal code, 18 U.S.C. 1091(a), which was adopted pursuant to the U.S. obligations under the Genocide Convention. The bill would also broaden the reach of the provision to apply not only to those who "engaged in genocide," as in current law, but also to cover any alien who has ordered, incited, assisted or otherwise participated in genocide. This broader scope will ensure that the genocide provision addresses a more appropriate range of levels of complicity.

Second, the current bar to aliens who have committed "particularly severe violations of religious freedom," as defined in the International Religious Freedom Act of 1998 (IRFA), limits its application to foreign government officials who engaged in such conduct within the last 24 months, and also bars from admission the individual's spouse and children, if any. The bill would delete reference to prohibited conduct occurring within a 24-month period since this limitation is not consistent with the strong stance of the United states to promote religious freedom throughout the world. As Professor Aceves opines:

> This provision is unduly restrictive * * * The 24-month time limitation for this prohibition is also unnecessary. A perpetrator of human rights atrocities should not be able to seek absolution by merely waiting two years after the commission of these acts.—William J. Aceves, supra, 20 Mich. J. Int'l. L., at 683.

In addition, the bill would remove the current bar to admission for the spouse or children. This is a serious sanction that should not apply to individuals because of familial relationships that are not within an individual's control. None of the other grounds relating to serious human rights abuse prevent the spouse or child of an abuser from entering or remaining lawfully in the United States. Moreover, the purpose of these amendments is to make those who have participated in atrocities accountable for their actions. That purpose is not served by holding the family members of such individuals accountable for the offensive conduct over which they had no control.

Changing the law to address the problem of human rights abusers seeking entry and remaining in the United States is only part of the solution. Effective enforcement is critical. As one expert noted:

> [s]trong institutional mechanisms must be established to implement this proposed legislation. At present, there does not appear to be any agency within the Department of Justice with the specific mandate of identifying, investigating and prosecuting modern day perpetrators of human rights atrocities. The importance of establishing a separate agency for this function can be seen in the experiences of the Office of Special Investigations.—William J. Aceves, supra, at 689.

OSI's mission must be updated to ensure effective enforcement. The U.S. has long provided the template and moral leadership for dealing with Nazi war criminals. The Justice Department's specialized unit, OSI, which was created to hunt down, prosecute, and remove Nazi war criminals who had slipped into the United States among their victims under the Displaced Persons Act, is an example of effective enforcement. Since the OSI's inception in 1979, over sixty Nazi persecutors have been stripped of U.S. citizenship, almost fifty such individuals have been removed from the United States, and more than 150 have been denied entry.

OSI was created almost 35 years after the end of World War II and it remains authorized only to track Nazi war criminals. Specifically, when Attorney General Civiletti, by a 1979 Attorney General order, established OSI within the Criminal Division of the Department of Justice, that office was directed to conduct all "investigative and litigation activities involving individuals, who prior to and during World War II, under the supervision of or in association with the Nazi government of Germany, its allies, and other affiliated governments, are alleged to have ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion." (Attorney Gen. Order No. 851–79). The OSI's mission continues to be limited by that Attorney General Order.

Not enough is being done about the new generation of international human rights abusers living in the U.S., and these delays are costly. Such delays make documentary and testimonial evidence more difficult to obtain. Stale cases are the hardest to make. The mistakes of the past when decades passed before Nazi war criminals, who settled in this country, were tracked down and brought to justice should not be repeated. War criminals should find no sanctuary in loopholes in current U.S. immigration policies and enforcement. No war criminal should ever come to believe that he is going to find safe harbor in the United States.

The Anti-Atrocity Alien Deportation Act would amend the Immigration and Nationality Act, 8 U.S.C. § 1103, by directing the Attorney General to establish an Office of Special Investigations (OSI) with the Department of Justice with authorization to denaturalize any alien who has participated in Nazi persecution, torture, extrajudicial killing or genocide abroad. Not only would the bill provide statutory authorization for Office of Special Investigation, it would also expand its jurisdiction to deal with any alien who participated in torture, extrajudicial killing and genocide abroad—not just Nazis.

The success of OSI in hunting Nazi war criminals demonstrates the effectiveness of centralized resources and expertise in these cases. OSI has worked, and it is time to update its mission. The

knowledge of the people, politics and pathologies of particular regimes engaged in genocide and human rights abuses is often necessary for effective prosecutions of these cases and would best be accomplished by the concentrated efforts of a single office, rather than in piecemeal litigation around the country or in offices that have more diverse missions.

These are the sound policy and practical reasons that experts in this area recommend that the United States "establish an office in the Justice Department similar to the one that has tracked Nazi war criminals, with an exclusive mandate to carry out the task of investigation [of suspected human rights abusers]." William Schulz, supra, at p. 24; see also United States of America: A Safe Haven for Torturers, supra, at 43 (recommending that an office be established within the Department of Justice "to have primary responsibility for investigating and prosecuting cases of torture and other crimes under international law").

This part of the legislation has proven controversial within the Department of Justice, but others have concurred in the judgment that the OSI is an appropriate component of the Department to address the new responsibilities proposed in the bill. Professor Aceves, who has studied these matters extensively, has concluded that OSI's "methodology for pursuing Nazi war criminals can be applied with equal rigor to other perpetrators of human rights violations. As the number of Nazi war criminals inevitably declines, the OSI can begin to enforce U.S. immigration laws against perpetrators of genocide and other gross violations of human rights." 20 Mich. J. Int'l. at 690.

Unquestionably, the need to bring Nazi war criminals to justice remains a matter of great importance. Funds would not be diverted from the OSI's current mission. Additional resources are authorized in the bill for OSI's expanded duties.

Significantly, the bill further directs the Attorney General, in determining what action to take against a human rights abuser seeking entry to or found within the United States, to consider whether a prosecution should be brought under U.S. law or whether the alien should be deported to a country willing to undertake such a prosecution. Despite ratifying the Convention Against Torture in 1994 and adopting a new law making torture anywhere in the world a crime, federal law enforcement has not used this authority. In fact, one recent observer noted that, "the U.S. has never prosecuted a suspected torturer; nor has it ever extradited one under the Convention Against Torture, although it has surrendered one person to the International Criminal Tribunal for Rwanda." William Schulz, supra, at pp. 23–24.

As one human rights expert has noted:

> The justifiable outrage felt by many when it is discovered that serious human rights abusers have found their way into the United States may lead well-meaning people to call for their immediate explusion. Such individuals certainly should not be enjoying the good life America has to offer. But when we ask the question "where should they be?" the answer is clear: they should be in the dock. That is the essence of accountability, and it should be the central goal of any scheme to penalize human rights abusers.—Hearing on H.R. 5238, "Serious Human Rights Abus-

ers Accountability Act," before the Subcomm. on Immigration and Claims of the House Comm. on the Judiciary, 106th Cong., 2d Sess., Sept. 28, 2000 (Statement of Elisa Massimino, Director, Washington Office, Lawyers Committee For Human Rights).

Finally, the bill directs the Attorney General to report to the Judiciary Committees of the Senate and the House on implementation of the new requirements in the bill, including procedures for referral of matters to OSI, any revisions made to INS forms to reflect amendments made by the bill, and the procedures developed, with adequate due process protection, to obtain sufficient evidence and determine whether an alien is deemed inadmissible under the bill.

V. SECTION-BY-SECTION ANALYSIS

Sec. 1. Short title

The bill may be cited as the "Anti-Atrocity Alien Deportation Act of 2002."

Sec. 2. Inadmissability and deportability of aliens who have committed acts of torture or extrajudicial killing abroad

Currently, the Immigration and Nationality Act (INA) provides that (i) participants in Nazi persecutions during the time period from March 23, 1933 to May 8, 1945, and (ii) aliens who engaged in genocide, are inadmissable to the United States. See 8 U.S.C. § 1182(a)(3)(E) (i) and (ii). Current law also provides that aliens who have participated in Nazi persecutions or engaged in genocide are deportable. See § 1227(a)(4)(D). The bill would amend these sections of the INA by expanding the grounds for inadmissibility and deportation to cover aliens who have committed, ordered, incited, assisted, or otherwise participated in the commission of acts of torture or extrajudicial killing abroad and clarify and expand the scope of the genocide bar.

Subsection (a) would first amend the definition of "genocide" in clause (ii) of section 212(a)(3) of the INA, 8 U.S.C. 1182(a)(3)(E)(ii). Currently, the ground of inadmissibility relating to genocide refers to the definition in the Convention on the Prevention and Punishment of the Crime of Genocide. Article III of that Convention punishes genocide, the conspiracy to commit genocide, direct and public incitement to commit genocide, attempts to commit genocide, and complicity in genocide. The bill would modify the definition to refer instead to the "genocide" definition in section 1091(a) of title 18, United States Code, which was adopted to implement United States obligations under the Convention and also prohibits attempts and conspiracies to commit genocide.

Specifically, section 1091(a) defines genocide as "whoever, whether in time of peace or in time of war, * * * with the specific intent to destroy, in whole or in substantial part, a national, ethnic, racial or religious group as such: (1) kills members of that group; (2) causes serious bodily injury to members of that group; (3) causes the permanent impairment of the mental faculties of members of the group through drugs, torture, or similar techniques; (4) subjects the group to conditions of life that are intended to cause the physical destruction of the group in whole or in part; (5) imposes meas-

ures intended to prevent births within the group; or (6) transfers by force children of the group to another group." This definition includes genocide by public or private individuals in times of peace or war. While the federal criminal statute is limited to those offenses committed within the United States or offenders who are U.S. nationals, see 18 U.S.C. 1091(d), the grounds for inadmissibility in the bill would apply to such offenses committed outside the United States that would otherwise be a crime if committed within the United States or by a U.S. national.

In addition, the bill would broaden the reach of the inadmissibility bar to apply not only to those who "engaged in genocide," as in current law, but also to cover any alien who has ordered, incited, assisted or otherwise participated in genocide abroad. This broader scope will ensure that the genocide provision addresses a more appropriate range of levels of complicity.

Second, subsection (a) would add a new clause to 8 U.S.C. § 1182(a)(3)(E) that would trigger operation of the inadmissibility ground if an alien has "committed, ordered, incited, assisted, or otherwise participated in" acts of torture, as defined in section 2430 of title 18, United States Code, or extrajudicial killings, as defined in section 3(a) of the Torture Victim Protection Act. The statutory language—"committed, ordered, incited, assisted, or otherwise participated in"—is intended to reach the behavior of persons directly or personally associated with the covered acts, including those with command responsibility. Command responsibility holds a commander responsible for unlawful acts when (1) the forces who committed the abuses were subordinates of the commander (i.e., the forces were under his control either as a matter of law or as a matter of fact); (2) the commander knew, or, in light of the circumstances at the time, should have known, that subordinates had committed, were committing, or were about to commit unlawful acts; and (3) the commander failed to prove that he had taken the necessary and reasonable measures to (a) prevent or stop subordinates from committing such acts, or (b) investigate the acts committed by subordinates in a genuine effort to punish the perpetrators. Attempts and conspiracies to commit these crimes are encompassed in the "otherwise participated in" language. This language addresses an appropriate range of levels of complicity for which aliens should be held accountbale, and has been the subject of extensive judicial interpretation and construction. See *Fedorenko* v. *United States,* 449 U.S. 490, 514 (1981); *Kalejs* v. *INS,* 10 F.3d 441, 444 (7th Cir. 1993); *U.S.* v. *Schmidt,* 923 F.2d 1253, 1257–59 (7th Cir. 1991); *Kulle* v. *INS,* 825 F.2d 1188, 1192 (7th Cir. 1987).

The definitions of "torture" and "extrajudicial killing" are contained in the Torture Victim Protection Act, which served as the implementing legislation when the United States joined the United Nations" "Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment." This Convention entered into force with respect to the United States on November 20, 1992 and imposes an affirmative duty on the United States to prosecute torturers within its jurisdiction. The Torture Victim Protection Act provides both criminal liability and civil liability for persons who, acting outside the United States and under actual or apparent authority, or color of law, of any foreign nation, commit torture or extrajudicial killing.

The criminal provision passed as part of the Torture Victim Protection Act defines "torture" to mean "an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control." 18 U.S.C. § 2340(1). "Severe mental pain or suffering" is further defined to mean the "prolonged mental harm caused by or resulting from (A) the intentional infliction or threatened infliction of severe physical pain or suffering; (B) the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality; and (C) the threat of imminent death; or (D) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality." 18 U.S.C. § 2340(2).

The bill also incorporates the definition of "extrajudicial killing" from section 3(a) of the Torture Victim Protection Act. This law establishes civil liability for wrongful death against any person "who, under actual or apparent authority, or color of law, of any foreign nation * * * subjects an individual to extrajudicial killing," which is defined to mean "a deliberated killing not authorized by a previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples. Such term, however, does not include any such killing that, under international law, is lawfully carried out under the authority of a foreign nation."

Both definitions of "torture" and "extrajudical killing" require that the alien be acting under color of law. A criminal conviction, criminal charge or a confession are not required for an alien to be inadmissible or removable under the new grounds added in this subsection of the bill.

The final paragraph in subsection (a) would modify the subparagraph heading to clarify the expansion of the grounds for in admissibility from "participation in Nazi persecution or genocide" to cover "torture or extrajudicial killing."

Subsection (b) would amend section 237(a)(4)(D) of the INA, 8 U.S.C. § 1227(a)(4)(D), which enumerates grounds for deporting aliens who have been admitted into or are present in the United States. The same conduct that would constitute a basis of inadmissibility under subsection (a) is a ground for deportability under this subsection of the bill. Under current law, assisting in Nazi persecution and engaging in genocide are already grounds for deportation. The bill would provide that aliens who have committed any act of torture or extrajudicial killing would also be subject to deportation. In any deportation proceeding, the burden would remain on the government to prove by clear and convincing evidence that the alien's conduct brings the alien within a particular ground of deportation.

Subsection (c) regarding the "effective date" clearly states that these provisions apply to acts committed before, on, or after the date this legislation is enacted. These provisions apply to all cases after enactment, even where the acts in question occurred or where adjudication procedures within the Immigration and Naturalization

Service (INS) or the Executive Office of Immigration Review were initiated prior to the time of enactment.

Sec. 3. Inadmissibility and deportability of foreign government officials who have committed particularly severe violations of religious freedom

This section of the bill would amend section 212(a)(2)(G) of the INA, 8 U.S.C. § 1182(a)(2)(G), which was added as part of the International Religious Freedom Act of 1998 (IRFA), to expand the grounds for inadmissibility and deportability of aliens who commit particularly severe violations of religious freedom. Current law bars the admission of an individual who, while serving as a foreign government official, was responsible for or directly carried out particularly severe violations of religious freedom within the last 24 months. 8 U.S.C. § 1182(c)(2)(G). The existing provision also bars from admission the individual's spouse and children, if any. "Particularly severe violations of religious freedom" is defined in section 3 of IRFA to mean systematic, ongoing, egregious violation of religious freedom, including violations such as (A) torture or cruel, inhuman, or degrading treatment or punishment; (B) prolonged detention without charges; (C) causing the disappearance of persons or clandestine detention of those persons; or (D) other flagrant denial of the right to life, liberty, or the security of persons. While IRFA contains numerous provisions to promote religious freedom and prevent violations of religious freedom throughout the world, including a wide range of diplomatic sanctions and other formal expressions of disapproval, section 212(a)(2)(G) is the only provision which specifically targets individual abusers.

Subsection (a) would delete the 24-month restriction in section 212(a)(2)(G) since it limits the accountability, for purposes of admission, to a two-year period. This limitation is not consistent with the strong stance of the United States to promote religious freedom throughout the world. Individuals who have committed particularly severe violations of religious freedom should be held accountable for their actions and should not be admissible to the United States regardless of when the conduct occurred.

In addition, this subsection would amend the law to remove the current bar to admissions for the spouse or children of a foreign government official who has been involved in particularly severe violations of religious freedom. The bar of inadmissibility is a serious sanction that should not apply to individuals because of familial relationships that are not within an individual's control. None of the other grounds relating to serious human rights abuse prevent the spouse or child of an abuser from entering or remaining lawfully in the United States. Moreover, the purpose of these amendments is to make those who have participated in atrocities accountable for their actions. That purpose is not served by holding the family members of such individuals accountable for the offensive conduct over which they had no control.

Subsection (b) would amend section 237(a)(4) of the INA, 8 U.S.C. § 1227(a)(4), which enumerates grounds for deporting aliens who have been admitted into or are present in the United States, to add a new clause (E), which provides for the deportation of aliens described in subsection (a) of the bill. The bill does not change the effective date for this provision set forth in the original

IRFA, which applies the operation of the amendment to aliens "seeking to enter the United States on or after the date of the enactment of this Act."

Sec. 4. Bar to good moral character for aliens who have committed acts of torture, extrajudicial killings, or severe violations of religious freedom

This section of the bill would amend section 101(f) of the INA, 8 U.S.C. § 1101(f), which provides the current definition of "good moral character," to make clear that aliens who have committed torture, extrajudicial killing, or severe violation of religious freedom abroad do not qualify. Good moral character is a prerequisite for certain forms of immigration relief, including naturalization, cancellation of removal for nonpermanent residents, and voluntary departure at the conclusion of removal proceedings. Aliens who have committed torture or extrajudicial killing, or severe violations of religious freedom abroad cannot establish good moral character. Accordingly, this amendment prevents aliens covered by the amendments made in sections 2 and 3 of the bill from becoming United States citizens or benefitting from cancellation of removal or voluntary departure. Absent such an amendment there is no statutory bar to naturalization for aliens covered by the proposed new grounds for inadmissibility and deportation.

Sec. 5. Establishment of the Office of Special Investigations

Attorney General Civiletti established OSI in 1979 within the Criminal Division of the Department of Justice, consolidating within it all "investigative and litigation activities involving individuals, who prior to and during World War II, under the supervision of or in association with the Nazi government of Germany, its allies, and other affiliated at [sic] governments, are alleged to have ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion." (Att'y Gen. Order No. 851–79). The OSI's mission continues to be limited by that Attorney General Order.

Subsection (a) would first amend the INA, 8 U.S.C. § 1103, by directing the Attorney General to establish an Office of Special Investigations within the Department of Justice with authorization to denaturalize any alien who has participated in Nazi persecution, genocide, torture or extrajudicial killing abroad. This would not only provide statutory authorization for OSI, but also expand OSI's current authorized mission beyond Nazi war criminals.

The second part of this subsection would authorize the Attorney General to delegate to any office or component within the Department of Justice the responsibility for determining inadmissibility, deportation, removal, prosecution or extradition of any alien who has participated in Nazi persecution, genocide, torture or extrajudicial killing abroad.

The third part of this subsection sets forth specific considerations in determining the appropriate legal action to take against an alien who has participated in Nazi persecution, genocide, torture or extrajudicial killing abroad. Significantly, in order to fulfill the United States' obligation under the "Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" to hold accountable torturers found in this country, the bill

expressly directs the Department of Justice to consider the availability of prosecution under United States laws for any conduct that forms that basis for removal and denaturalization. In addition, the Department is directed to consider deportation to foreign jurisdictions that are prepared to undertake such a prosecution. Statutory and regulatory provisions to implement Article 3 of the Convention Against Torture, which prohibits the removal of any person to a country where he or she would be tortured, must also be part of this consideration.

Subsection (b) authorizes additional funds for these expanded duties to ensure that OSI fulfills its continuing obligations regarding Nazi war criminals.

Sec. 6 Report on Implementation of the Act

This section of the bill would direct the Attorney General, in consultation with the INS Commissioner to report within six months on implementation of the Act, including procedures for referral of matters to OSI, any revisions made to INS forms to reflect amendments made by the bill, and the procedures developed, with adequate due process protection, to obtain sufficient evidence and determine whether an alien is deemed inadmissible under the bill.

VI. COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 25, 2002.

Hon. PATRICK J. LEAHY,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 864, the Anti-Atrocity Alien Deportation Act of 2002.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz.

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

S. 864—Anti-Atrocity Alien Deportation Act of 2002

Summary: S. 864 would authorize the appropriation of such sums as necessary for the Office of Special Investigations (OSI), an office within the Department of Justice whose primary mission is to investigate and prosecute persons involved in Nazi persecutions during World War II. The bill also would amend the Immigration and Nationality Act to make aliens who commit acts of torture and certain other atrocities inadmissable to and deportable from the United States.

Assuming appropriation of the necessary amounts, CB0 estimates that implementing S. 864 would cost $32 million over the 2003–2007 period. This estimate assumes that funding would be adjusted each year for inflation. Without such adjustments, we estimate that implementation would cost $29 million over the 2003–2007 period.

Because the bill would not affect direct spending or receipts, pay-as-you-go procedures would not apply. S. 864 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 864 is shown in the following table. For this estimate, CBO assumes that the necessary amounts will be appropriated by the start of each fiscal year and that outlays will follow the historical spending pattern of the OSI. Estimated authorization levels for 2003 through 2007 are based on the 2002 appropriation for the OSI, about $6 million. CBO estimates that implementing S. 864 would have no significant effect on spending by the Immigration and Naturalization Service because of the small number of cases affected. The costs of this legislation fall within budget function 750 (administration of justice).

	By fiscal year, in millions of dollars—					
	2002	2003	2004	2005	2006	2007
SPENDING SUBJECT TO APPROPRIATION						
OSI spending under current law:						
Budget authority[1]	6	0	0	0	0	0
Estimated outlays	6	1	0	0	0	0
Proposed changes:						
Estimated authorization level	0	6	6	7	7	7
Estimated outlays	0	5	6	7	7	7
OSI spending under S. 864:						
Estimated authorization level[1]	6	6	6	7	7	7
Estimated outlays	6	6	6	7	7	7

[1] The 2002 level is the amount appropriated for that year.

Pay-as-you-go considerations: None.

Intergovernmental and private-sector impact: S. 864 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, and or tribal governments.

Estimate prepared by: Federal costs: Mark Grabowicz; Impact on state, local, and tribal governments: Angela Seitz; Impact on the private sector: Paige Piper/Bach.

Estimate approved by: Robert A. Sunshine, Assistant Director for Budget Analysis.

VII. REGULATORY IMPACT STATEMENT

In compliance with paragraph 11(b)(1), rule XXVI of the Standing Rules of the Senate, the Committee, after due consideration, concludes that S. 864 will not have significant regulatory impact.

VIII. CHANGES IN EXISTING LAW

In the opinion of the Committee, it is necessary in order to expedite the business of the Senate, to dispense with the requirements of paragraph 12 of rule XXVI of the Standing Rules of the Senate (relating to the showing of changes in existing law made by the bill as reported by the Committee).

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